

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH ANDREWS,

Defendant-Appellant.

UNPUBLISHED

April 26, 1996

No. 167117

LC No. 92-012972

Before: MacKenzie, P.J., and Cavanagh and T.L. Ludington,* JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of third-degree criminal sexual conduct, MCL 750.520(d)(1)(a); MSA 28.788(4), and assault with intent to commit criminal sexual conduct involving sexual penetration, MCL 750.520(g)(1); MSA 28.788(7). Defendant was sentenced to ten to fifteen years' imprisonment for the criminal sexual conduct conviction and eighty to 120 months' imprisonment for the assault conviction. We affirm.

In his first issue, defendant claims that he was denied a fair trial by the misconduct of the trial court. A trial judge has wide discretion in matters of trial conduct. This power, however, is not unlimited. If the trial judge's conduct pierces the veil of judicial impartiality, a defendant's conviction must be reversed. The appropriate test to determine whether the trial judge's comments or conduct pierced the veil of judicial impartiality is whether the comments or conduct were of such a nature as to unduly influence the jury and thereby deprive the defendant of his right to a fair and impartial trial. *People v Romano*, 181 Mich App 204, 220; 448 NW2d 795 (1989).

Defendant did not object to the trial court's conduct below, and therefore appellate review is precluded absent manifest injustice. *People v Weatherford*, 193 Mich App 115, 121; 483 NW2d 924 (1992). After carefully reviewing the record, we find no manifest injustice. Many of the comments defendant complains of constitute a legitimate exercise of the trial court's responsibility to control the

* Circuit judge, sitting on the Court of Appeals by assignment.

proceedings. See MCR 611(a). For example, the trial court acted to ensure that defense counsel properly phrased his questions and that the questions were understood by the witness. While the trial court corrected counsel's manner of questioning, it did not demean or belittle him. Compare *People v Wigfall*, 160 Mich App 765, 767-769; 408 NW2d 551 (1987).

Defendant also claims that the trial court's questioning of the witness Gregory Urban was improper. The trial judge may question witnesses in order to clarify testimony or to elicit additional information. MRE 614(b); *People v Conyers*, 194 Mich App 395, 404; 487 NW2d 787 (1992). However, he must exercise caution and restraint in order to ensure that his questions are not intimidating, argumentative, prejudicial, unfair, or partial. *Conyers, supra* at 404-405; *People v Sterling*, 154 Mich App 223, 228; 397 NW2d 182 (1986).

We find no error requiring reversal. First, several of the trial court's questions constituted a legitimate attempt to clarify Urban's previous testimony. MRE 614(b); *Conyers, supra* at 404. The trial court's other questions did not bring out any new information, but only reiterated that the tether system would not necessarily register a violation if defendant were to go onto his front porch. Urban was not a key witness for the prosecution; rather, this case came down to a credibility contest between defendant and the complainant. Moreover, the trial court instructed the jurors that it was their job to assess the credibility of the witnesses. In view of the above factors, we do not believe that this isolated instance of judicial questioning constituted partiality that might have influenced the jury to defendant's detriment. See *id.* at 405.

With regard to the other passages cited by defendant, we agree that a few of the trial court's comments could have been phrased better. However, the court's comments are subject to a harmless error test. *People v Weathersby*, 204 Mich App 98, 110; 514 NW2d 493 (1994). Because we do not believe that these comments were of such a nature as to unduly influence the jury and deprive defendant of his right to a fair trial, we conclude that any error was harmless and reversal is not required. Cf. *People v Gendron*, 144 Mich App 509, 519; 376 NW2d 143 (1985).

Defendant also contends that the trial court violated his Sixth Amendment right to confront witnesses against him by refusing to permit re-cross-examination of the complainant. A defendant does not have an unlimited right to cross-examine on any subject. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). The permissible scope of cross-examination during a trial is vested in the sound discretion of the trial court. *People v Jackson*, 108 Mich App 346, 348; 310 NW2d 238 (1981). The standard for reviewing an abuse of discretion is narrow; the result must have been so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias. *People v Woods*, 200 Mich App 283, 288; 504 NW2d 24 (1993).

We find no error requiring reversal. Defendant extensively cross-examined the complainant on her statements to the police. During redirect, the prosecutor elicited additional information regarding their statements and complainant's state of mind when the statements were taken. Accordingly, no new

matters were raised on redirect. The trial court had the authority to limit recross-examination and did not abuse its discretion in doing so.

Defendant next argues that his sentences are disproportionate. We disagree. Defendant's sentences are within the guidelines and are therefore presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant has not presented the sentencing court and this Court with mitigating factors sufficient to overcome the presumption of proportionality. *People v Eberhardt*, 205 Mich App 587, 591; 518 NW2d 511 (1994). Defendant's sentences are proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Finally, defendant contends that the prosecutor knowingly used false testimony to secure his conviction. Defendant points out that the complainant testified that after the assault she went home, went to the bathroom, and then to her bedroom. Defendant asserts that this testimony is contradicted by the testimony of the complainant's mother and sister. We find no error. Although neither the complainant's mother nor her sister stated that complainant went to the bathroom before going to her bedroom, it appears from the record that neither witness was in a position to see whether complainant went to the bathroom first. Moreover, any inconsistencies between the testimony of the complainant and her mother and sister were heard by the jury and could have been used by defendant at trial to impeach the complainant's credibility. See *People v McWhorter*, 150 Mich App 826, 831-832; 389 NW2d 499 (1986). In addition, even if the complainant did commit perjury, there is no evidence that the prosecutor was aware that the testimony was false.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Mark J. Cavanagh

/s/ Thomas L. Ludington